



4310-4J-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Pueblo of Acoma - Title 19 - Alcoholic Beverage Sales Law of the Pueblo of Acoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Alcoholic Beverage Sales Law of the Pueblo of Acoma. The Law regulates and controls the possession, sale and consumption of liquor within the Pueblo of Acoma. The Law will increase the ability of the Pueblo of Acoma to control the distribution and possession of liquor within their Reservation and Indian country, provide an important source of revenue, and improve the tribal government's capacity to deliver tribal services.

DATES: Effective Date: This law is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Riley, Acting Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, 1011 Indian School Road, NW, Suite 254, Albuquerque NM 87104; Telephone: (505) 563-3114; Fax: (505) 563-3101, or Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Office of Indian Services, 1849 C Street, NW, MS-4513-MIB, Washington, D.C. 20240; Telephone: (202) 513-7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal**

Register notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Pueblo of Acoma Tribal Council duly adopted this law by Resolution No. TC-JUL-22-14 VIa on July 22, 2014.

The Indian Civil Rights Act (ICRA) provides that no Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. 25 U.S.C. § 1302(8).

The U.S. Supreme Court and 10th Circuit have determined that a license, such as a liquor license or a server permit, is a property interest and that the process by which a government revokes a license must provide the licensee notice and an opportunity to be heard prior to revocation.

Bell v. Burson, 402 U.S. 535, 539 (1971); *Stidham v. Peace Officer Stds. & Training*, 265 F.3d 1144, 1150 (10th Cir. 2001).

The Acoma Beverage Sales Law published herein states that, “Notwithstanding any other provision of this Law, a License or Permit issued hereunder shall not be deemed a property right or vested right of any kind.” 19-7-6. This statement is contrary to the weight of Federal law, but does not have substantive effect on the rights of licensees and permittees. The substantive provision at 19-7-4 expressly provides that “Revocation of a License or Server Permit will occur only following an opportunity for a hearing before the Tribal Court.” I certify the Law even though it says that licenses and permits shall not be considered property rights, because the due process rights of licensees and permittees are protected under 19-7-4 and in light of the severability provision at 19-14-1.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Pueblo of Acoma Tribal Council duly adopted the Alcoholic Beverage Sales Law of the Pueblo of Acoma by Resolution No. TC-JUL-22-14 VIa on July 22, 2014.

Dated: January 22, 2015

Kevin Washburn,
Assistant Secretary – Indian Affairs.

The Pueblo of Acoma Alcoholic Beverage Sales Law follows:

Chapter 1. INTRODUCTION

19-1-1 Title. The title of this law shall be the Alcoholic Beverage Sales Law of the Pueblo of Acoma.

19-1-2 Authority. This law is being passed and enacted in accordance with the inherent governmental powers of the Pueblo of Acoma, a federally recognized tribe of Native Americans, which has no written Constitution, and in conformance with the laws of the State of New Mexico, as required by 18 United States Code Section 1161. That federal law allows sale of liquor/alcoholic beverages on Indian land in conformity with State and tribal law. State Law, Section 60-3A-5.D. NMSA 1978, exempts the Pueblo from application of the New Mexico

Liquor Control Act provided alcoholic beverages are purchased from New Mexico wholesalers, and sales, service, possession or consumption are in accordance with a law approved by the Pueblo and the United States.

19-1-3 Purpose. The purpose of this law is to regulate the sale of Alcoholic Beverages (as herein defined) within the exterior boundaries of the Pueblo of Acoma.

19-1-4 Limited Change to Existing Law. Alcoholic beverages may be sold in compliance with this law, which creates an exception to section 6-20-17 of Pueblo of Acoma written laws (2003). Alcoholic beverages remain illegal within the Pueblo, except as allowed by this Law.

Chapter 2. DEFINITIONS

19-2-1 Definitions. The definitions below apply to this Law Only.

A. Alcoholic Beverage. The term “Alcoholic Beverage” includes the four varieties of liquor commonly referred to as alcohol, spirits, wine and beer, and all fermented spirituous, vinous or malt liquor or combinations thereof and mixed liquor a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating and every liquid or solid or semisolid or other substances patented or not, containing alcohol, spirits, wine or beer excluding any prescription or over-the-counter medicine, any product not fit for human consumption and wine used for sacramental purposes.

B. Enterprise. The term “Enterprise” means a person engaged in or desiring to engage in the business of selling Alcoholic Beverages.

C. Intoxicated Person. The term “Intoxicated Person” means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs.

D. License. The term “License” means a license or authorization by the Tribal Council for an Enterprise to sell Alcoholic Beverages at a designated location.

E. Licensed Establishment. The term “Licensed Establishment” means:

1. A designated location within the physical area of Pueblo of Acoma tribal land, excluding lands which have been assigned to an individual tribal member, or;

2. A certain space or area within a building on Pueblo of Acoma tribal lands (which have not been assigned to an individual tribal member), designated by the Pueblo of Acoma Tribal Council as a place where Alcoholic Beverages can be sold. A Licensed Establishment may be a designated area, such as an amphitheater.

F. Licensee. The term "Licensee" means an Enterprise which holds a Pueblo of Acoma Liquor License and is authorized by the Tribal Council to sell and serve Alcoholic Beverages in a Licensed Establishment.

- G. Minor. The term “Minor” means any person under the age of twenty-one (21) years.
- H. Permitted Server. The term “Permitted Server” means any individual who is an owner or employee of a Licensee and who is authorized to sell, serve, or dispense Alcoholic Beverages under such rules and regulations as the Pueblo may adopt. A Permitted Server may not be a Minor.
- I. Person. The term “Person” means an individual, corporation, limited liability company, partnership, joint venture, association, trust unincorporated organization or business, government, Native American Tribe (including the Pueblo and its Enterprises), or any agency, instrumentality, or subdivision thereof.
- J. Pueblo. The term “Pueblo” means the Pueblo of Acoma, a federally-recognized tribe of Native Americans located within the exterior boundaries of the State of New Mexico.
- K. Server Permit. The term “Server Permit” means a permit to serve Alcoholic Beverages issued by this Pueblo to a Permitted Server.
- L. Tribal Council. The term “Tribal Council” means the Pueblo of Acoma Tribal Council.
- M. Wholesaler. The term “Wholesaler” means a person whose place of business is located in New Mexico and who sells, offer for sale or possesses for the purpose of sale any Alcoholic Beverages for resale by a purchaser which is a Licensee.

Chapter 3. GENERAL

19-3-1 [Jurisdiction]. The sales of Alcoholic Beverages shall be lawful within the exterior boundaries of the Pueblo of Acoma and on all other lands of the Pueblo over which the Pueblo has jurisdiction, provided that such sale is made in conformance with federal law, and is authorized by this Law.

Chapter 4. SALES ALLOWED

19-4-1 [Sales on Pueblo Lands]. Sales of Alcoholic Beverages on Pueblo lands are authorized only if the sale occurs in a Licensed Establishment owned or operated by a Licensee.

19-4-2 [Sales at Licensed Establishment]. Sales of Alcoholic Beverages at a Licensed Establishment may be made only by a Permitted Server.

19-4-3 [Sales to Individuals]. No sale of Alcoholic Beverages shall be made to a person under the age of twenty-one (21), or to an Intoxicated Person.

Chapter 5. LICENSES AND PERMITS

19-5-1 Licensees.

A. Licensed Seller. Acoma Business Enterprises (ABE) directed by the Acoma Business Board is expressly recognized as a Licensee. Sale of Alcoholic Beverages may occur only in a Licensed Establishment owned or operated by a Licensee.

B. Licensed Establishments. Licensed Establishments are places which meet the requirements of Chapter 6 of this Alcoholic Beverage Sales Law.

C. Term and Renewal. Licenses shall be issued for a period not to exceed five (5) years, and may be renewable at the discretion of the Pueblo upon the submission of a properly completed renewal application, accompanied by the applicable license renewal fee, as established from time to time by the Pueblo.

19-5-2 Permitted Servers.

A. Any individual, including an individual employed by the Pueblo, who become a Permitted Server, shall apply for a Server Permit on such form and pursuant to such rules and regulations as the Pueblo may adopt. The application shall be submitted to the Acoma Office of Taxation and Assessment and must contain, among other document(s) showing that the individual has taken the requisite alcohol server training program as may be required of individuals selling Alcoholic Beverages under the laws of the State of New Mexico.

B. Server Permits, unless sooner revoked, shall be issued for a period of up to five (5) years from the date that the Permitted Server has completed an alcohol server training program.

C. Each Manager of each Licensed Establishment shall be a Permitted Server.

19-5-3 Fingerprint Procedures.

A. The Pueblo may require two sets of fingerprints from any or all of the individuals identified in section 19-5-2 above.

B. All applicants to become a Permitted Server and any other individual required to submit fingerprints hereunder must consent that the fingerprints may be processed by local and National law enforcement agencies and all other available agencies. If the search, by virtue of the fingerprint submission, reveals any adverse information which was not shown on the application, the individual concerned will be given an opportunity to explain the circumstance of such omission or challenge the authenticity of the revealed information.

C. Any cost associated with supplying the complete sets of fingerprints and the investigation thereafter will be borne exclusively by the Permitted Server applicant.

Chapter 6. LICENSED ESTABLISHMENTS

19-6-1 [Sales and Serving]. Sales and serving of Alcoholic Beverages may occur only in a Licensed Establishment.

19-6-2 [Identification of Licensed Establishment]. Each Licensed Establishment shall be identified by a map showing its designated location and the perimeters of the land and/or building, or portion thereof, together with a general description of the premises, which map and description shall be filed with the Pueblo together with a documented approval by the Acoma Business Board requesting the Acoma Tribal Council for a License to operate a Licensed Establishment. A parcel of land not containing a building, so long as the perimeters thereof are defined, may be a Licensed Establishment including, but not limited to, an amphitheater, or an area(s) adjacent to the Acoma Casino & Hotel, conference center, restaurant and coffee shop complex (such as outdoor cafes and special event tents).

19-6-3 [Designated Location]. A designated location authorized by the Tribal Council to sell Alcoholic Beverages shall be deemed to be a Licensed Establishment upon filing the map and description required under section 19-6-2 and approval by Resolution of the Tribal Council.

19-6-4 [Location of Licensed Establishment]. No Licensed Establishment shall be located closer than 500 feet from any church, school, or military installation. A Licensed Establishment shall be specifically designated as to whether it is permitted to sell Alcoholic Beverages by the package and/or by the drink.

19-6-5 [Limits on Types of Sales]. Tribal Council can restrict or limit the scope or types of sales of alcoholic beverages allowed at each Licensed Establishment.

19-6-6 [Purchase of Alcohol from NM Wholesalers]. A Licensed Establishment shall only purchase alcoholic beverages for resale from New Mexico wholesalers.

Chapter 7. LICENSE AND SERVER PERMIT APPROVALS AND DENIALS

19-7-1 [Grant, Denial or Renewal of License]. The granting, denial or renewal of a License shall be within the discretion of the Pueblo of Acoma Tribal Council.

19-7-2 [Grant, Denial or Renewal of Server Permit]. The granting, denial or renewal of a Server Permit shall be within the discretion of the Pueblo of Acoma Office of Taxation and Assessment.

19-7-3 [Termination or Revocation of License or Server Permit; For Cause]. A License or a Server Permit may be terminated or revoked for cause. Cause shall include:

- A. A violation of this Law;
- B. A violation of the Gaming Compact between the Pueblo and the State of New Mexico;
- C. A violation of any rules and regulations adopted by the Pueblo to implement this Law;
- D. A sale of Alcoholic Beverages outside a Licensed Establishment or in violation of its License;

E. The conviction of a Licensee or a Permitted Server of a felony or of a misdemeanor involving a violation of any alcoholic beverage law;

F. A material misstatement in the application for a License or Server Permit;

G. Allowing illegal activities within the Licensed Establishment.

19-7-4 [Revocation of License or Server Permit; Hearing]. Revocation of a License or Server Permit will occur only following an opportunity for a hearing before the Tribal Court. Decisions of the Tribal Court shall be final and not subject to further review. Revocation proceedings can be initiated by the Administrator of this Law (see Section 19-10-2).

19-7-5 [Non-Transferable or Assignable]. No transfer or assignment of a License shall be made without the approval in writing of the Tribal Council.

19-7-6 [No Property or Vested Right]. Notwithstanding any other provision of this Law, a License or Permit issued hereunder shall not be deemed a property right or vested right of any kind. Nor shall the granting of any License or Permit give rise to a presumption or legal entitlement to the renewal of such License or Permit.

Chapter 8. PROHIBITED SALES AND PRACTICES

19-8-1 [Licensee and Permitted Servers]. No Licensee or Permitted Server shall:

- A. Sell, serve or dispense Alcoholic Beverages to any person who is obviously intoxicated;
- B. Award Alcoholic Beverages as prizes;
- C. Sell Alcoholic Beverages to a Minor;
- D. Knowingly sell Alcoholic Beverages to an adult purchasing such liquor on behalf of a Minor or an Intoxicated Person; or
- E. Allow a person to bring Alcoholic Beverages onto the premises of a Licensed Establishment.

Chapter 9. ENFORCEMENT

19-9-1 Criminal Penalties.

- A. A Permitted Server who is subject to the criminal jurisdiction of the Pueblo and is found guilty of violating any portion of this Law, or is found guilty of having made any materially false statement or concealed any material facts in his/her application for a Server Permit granted pursuant to the provisions of this Law, shall have his/her/its Server Permit immediately revoked

subject to reinstatement after a hearing pursuant to 19-7-4, and such individual shall be subject to a fine not to exceed \$500.00 for each violation.

B. Any person subject to the jurisdiction of the Pueblo who is found guilty of purchasing Alcoholic Beverages on behalf of a minor or an intoxicated person shall be subject to a fine not to exceed \$500.00 for each violation or not to exceed one (1) month in jail, or both.

C. Any Minor subject to the jurisdiction of the Pueblo purchasing, attempting to purchase, or found in possession of Alcoholic Beverages shall be subject to a fine not to exceed \$500.00 for each violation.

19-9-2 Civil Penalties.

A. Any Permitted Server who violates any provision of this Law or regulations promulgated hereunder may be subject to revocation of his/her Server Permit as well as immediate termination of his /her employment, and to such other civil sanctions as are provided in this Law or rules and regulations implementing it.

B. Any non-member of the Pueblo who purchases Alcoholic Beverages on behalf of a Minor or an Intoxicated Person shall be subject to exclusion from Pueblo lands.

Chapter 10. RULES AND REGULATIONS; ADMINISTRATION

19-10-1 Rules and Regulations. The Tribal Council may adopt and enforce rules and regulations to implement this Law. The rules and regulations will be in conformance with New Mexico State law, if applicable, and with this Law.

19-10-2 Administration. The Pueblo of Acoma Office of Taxation and Assessment shall be responsible for implementation of this Law.

19-10-3 Training. Each person empowered to issue Server Permits shall satisfy all education and training requirements for issuance of a Server Permit.

Chapter 11. LIABILITY INSURANCE

19-11-1 [Liquor Liability Insurance]. Any Licensee authorized by this Law shall obtain the requisite Liquor Liability Insurance in an amount not less than two million dollars (\$2,000,000) per occurrence, or such higher amount set by Resolution of Tribal Council or terms of the Gaming Compact between the Pueblo and the State of New Mexico.

Chapter 12. WHOLESALER LICENSING

19-12-1 [Exemptions for Licensing Fees and Background Checks]. All Wholesalers supplying alcoholic beverages to the Sky City Food & Beverage Department will be exempt from any licensing fees and background checks.

Chapter 13. AMENDMENT

19-13-1 [Effective Date]. This Law is the Alcoholic Beverage Sales Law of the Pueblo of Acoma. This Law shall be effective upon the final approval of this Law by the Secretary of the Interior or his designated representative.

19-13-2 [Amendment]. This law may be amended by the Tribal Council, to become effective after federal approval and publication of notice in the Federal Register.

Chapter 14. SEVERABILITY

19-14-1 [Valid Provisions Continue in Effect]. In the event any provision of this Law is declared invalid or unconstitutional by a court of competent jurisdiction, all other provisions shall not be affected and shall remain in full force and effect.

Chapter 15. SOVEREIGN IMMUNITY

19-15-1 [Pueblo's Sovereign Immunity Not Waived]. The sovereign immunity of the Pueblo of Acoma is not waived by this Law.

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